DISCLOSURE OF CONFLICT OF INTEREST FOR DISQUALIFICATION PURPOSES

No public official at any level of state or local government shall make, participate in making, or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Gov. Code § 87100.)

Public officials include officers, employees, consultants, and members of boards and commissions with decision making authority, regardless of whether the membership on the board or commission is salaried or unsalaried. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of his or her economic interests.

If a public official determines not to act because of a disqualifying financial interest, this determination must be accompanied by disclosure of the financial interest, made part of the agency's official record, or made in writing to the official's supervisor, to the appointing power, or to any other person specified in a Conflict of Interest Code. (2 Cal.Code Regs. § 18702.1(a)(5); Bennett Advice Letter, No. A-98-239.)[1]

A form entitled "Disclosure of Disqualifying Economic Interest" has been prepared to assist officials and agencies to comply with this provision, and should be completed each time the public official determines he or she has a disqualifying financial interest. We caution public officials not to rely on this form to determine whether they have a conflict of interest, in that the laws related to conflicts of interests are very comprehensive and fact intensive. Rather, this form is to be completed and filed <u>after</u> an independent determination that a conflict exists has been made. Once completed, these forms should be filed with the appropriate agency, as follows:

> Employees-file with their department.
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> Elected officials, members of boards or commissions, and consultants-file with the City Clerk.

Elected officials and members of boards or commissions must <u>also</u> disclose on the record of applicable proceedings. If not present, the City Clerk or Secretary to the particular board or commission should make the disclosure. Examples of disclosure statements that comply with the disclosure requirement were provided by the FPPC in File No. I-99-102, which are set forth below:

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[1]In *Kunec v. Brea Redevelopment Agency* (1997) 55 Cal.App.4th 511, 521-522, the court invalidated a decision of the Redevelopment Agency for failure to make a full public disclosure on the record (namely the minutes of the proceeding) about why two council members had an actual or potential conflict of interest, and without explaining on the same public record, why there was no alternative to the city council as a source of decisionmaking authority, which is required under the regulations of the FPPC.

Investment. "I disqualify myself from this item because it is reasonably foreseeable that [name of business entity] in which I have an investment interest, will be materially affected by this decision."

Real Property. "I disqualify myself from this item because it is reasonably foreseeable that my real property, which is located [in the redevelopment area, in the district, within 300 feet of the project, etc.], will be materially affected by this decision."

Income. "I disqualify myself from this item because it is reasonably foreseeable that [name of entity or individual], which is a source of income to me, will be materially affected by this decision."

Business Position. "I disqualify myself from this item because it is reasonably foreseeable that [name of business or entity], in which I am a [director, officer, partner, trustee, employee, or hold a management position, etc.] will be materially affected by this decision."

Gift. "I disqualify myself from this item because it is reasonably foreseeable that [name of entity or individual], which is the donor of a gift to me, will be materially affected by this decision."